IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 482 OF 2005

Mrs. Alka Purohit & anr.... ... Appellants.

Versus

Sumir Avdhut Kakodkar & Ors.. ... Respondents.

Mr. M. R. Deshpande for the Appellants.

Mr. S. C. Naidu for Respondent No.3.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

Heard Shri Deshpande, learned Counsel for the Appellants and Shri Naidu, learned Counsel for the Respondents.

2. This appeal from order is by original plaintiffs by which challenge is to the order dated 24th March, 2005 passed on notice of motion taken out by the appellants / plaintiffs. By the said order the learned trial Judge has clarified that order of status quo granted in favour of appellants has come to an end and the respondent No.3 may proceed to take further

action in respect of the suit flat.

3. A notice dated 15th September, 2004 was issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the said Act") to the principal borrowers of the respondent No.3, who are the owners of the suit flat and who are respondent Nos.1 and 2 in this appeal from order. The demand was for payment of Rs.41,36,794/- as on 30th April, 2004 with further interest thereon from 1st May, 2004. There was no reply sent to the said notice either by the borrowers or by the guarantors. On 2nd March, 2005 notice under Section 13 (4) of the said Act was issued by respondent No.3. The appellants, who claim on the basis of the leave and licence from 1st October, 2004, filed writ petition No. 966 of 2005 in this court. A statement was made in the said writ petition that the appellants were ready and willing to pay Rs.32 lacs and/or any other amount subject to valuation of the said flat to respondent No.3. The said writ petition was dismissed by the Division Bench of this Court.

4. Thereafter, the appellants / plaintiffs filed a

civil suit. Initially, ad-interim order was passed by the learned trial Judge on 10th March, 2005 by which the appellants were directed to deposit Rs.40 lacs in the trial Court within a period of two weeks. By a further order, the said amount of Rs.40 lacs was reduced to Rs.33,70,098/-. Admittedly, nothing has been deposited by the appellants.

5. Shri Deshpande, learned Counsel appearing for the appellants, states that the appellants are not in a position to deposit any amount immediately. He states that as and when the suit flat is put to auction, the appellants are ready to offer bid in the sum of Rs.38 lacs. Apart from the contentions raised by respondent No.3 regarding maintainability of the suit, prima facie, it appears that the appellants have no right, title and interest in respect of the suit flat save and except the rights claimed under the alleged agreement of leave and licence which came into existence after notice under Section 13(2) of the said Act was issued by respondent No.3. Even while filing a writ petition in this Court, the appellants had offered to pay Rs.32 lacs to the respondent No.3. The trial Court initially protected the appellants by directing them to deposit a sum of Rs.40 lacs and the

said amount was subsequently brought down to Rs.33,70.098/-. Since the appellants are not depositing any amount, they are not entitled to equitable relief. In so far as the offer of the appellants to offer bid in the auction, it is for the appellants to offer the bid as and when the suit flat is put to auction. There is no merit in this appeal from order and the same is dismissed.

6. All parties concerned to act on an authenticated copy of this order.

Sd/-

(**A. S. OKA, J.**)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 543 OF 2005

IN

APPEAL FROM ORDER NO. 482 OF 2005

Mrs. Alka Purohit & anr.... ... Appellants.

Versus

Sumir Avdhut Kakodkar & Ors.. ... Respondents.

Mr. M. R. Deshpande for the Appellants.

Mr. S. C. Naidu for Respondent No.3.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

In view of the disposal of the Appeal from Order, this Civil Application does not survive. Hence rejected.

Sd/-

(A. S. OKA, J.)